

1 Day?

2 MR. BELISLE: I didn't bring a calendar, your
3 Honor.

4 MR. CARR: That was my question, whether that
5 --

6 MR. GOLDSTEIN: Labor Day is being observed
7 on Monday, September 7th, your Honor.

8 JUDGE MILLER: 7th. You have asked until the
9 2nd of September and the reason is the hurricane in
10 Miami. Let's make sure that we put the words right on
11 the record.

12 MR. BELISLE: Yes, your Honor.

13 JUDGE MILLER: Not trouble in Miami.

14 MR. BELISLE: No, there hasn't been civil
15 unrest.

16 JUDGE MILLER: There's some days it means
17 riots and other days it means hurricanes.

18 MR. BELISLE: No, I've been trying t get in
19 touch with my office since Sunday and I can't even get
20 our answering service.

21 MR. CARR: Your Honor, I would consent to
22 that request.

23 JUDGE MILLER: All right. Is it all right
24 with you, Mr. Goldstein?

25 MR. GOLDSTEIN: Yes, it is, your Honor.

1 JUDGE MILLER: Okay. Your motion is granted,
2 you have until September 2nd to file an opposition to
3 Taylor's first motion to enlarge the issues against
4 your client.

5 MR. BELISLE: Well, thank you, your Honor,
6 and thank you, counsel.

7 JUDGE MILLER: All right. Now, with that
8 background, as I said, we may need to add a phase three
9 if I have to add issues, but we are then prepared to
10 move on to Paragraphs 12 through 14 of the prehearing
11 order and that deals with settlement.

12 I have your July 21, 1992 joint settlement
13 memorandum and there you state that offers and counter
14 offers remain on the table. Now, Jupiter, Florida,
15 being a resort area may hold future promise
16 financially, but it's not the largest market around and
17 it's going to take a long time for you people to get
18 your legal and engineering expenses back to your
19 clients.

20 And as you know, there's another FM station
21 going to go into Jupiter, probably before you finish
22 this case and that's Judge Chachkin's case. And stated
23 bluntly, but from an economic viewpoint, a scenario is
24 rapidly being created where the winner could end up a
25 loser.

1 By the time all the litigation and
2 engineering expenses are paid and the corner is turned,
3 assuming that it is ever turned, the winner could be
4 facing bankruptcy. Moreover, and in light of the
5 pleadings that are before me, you may have pleaded
6 yourself away from the settlement table.

7 If we end up with basic qualifying issues
8 against both applicants, we could end up with nobody
9 getting a grant and at best, the survivor will have to
10 satisfy, at best the survivor will have to satisfy the
11 basic qualifying issues outstanding against them,
12 before they can become the surviving applicant.

13 So my advice to you, for what it's worth and
14 it's my job to further the Commission's policy of
15 encouraging settlement, is for you to sit down together
16 at least once more, face to face, in the near future,
17 preferably both attorneys and clients together, after
18 you have realistically, and let me repeat that word,
19 realistically, appraised both your legal and economic
20 positions.

21 Don't delude yourselves, that's what I'm
22 saying. Realistically.

23 Now, Paragraphs 12 through 14 of the
24 prehearing order were put in there because the
25 Commission favors settlements, if they're feasible and

1 in the public interest and if there's something in it
2 for the public.

3 Now, if you sit down face to face and decide
4 you can't settle it, it's not going to offend me. My
5 job is either to get you to settle this case or try it.
6 That's the only two options left, now that you've been
7 placed in the hearing and I think you recognize that
8 it's not me that has to take the rubber band off the
9 bankroll, your client does.

10 I don't have to scurry around digging up
11 documents and interviewing witnesses, your client does.
12 I'm not the one that has to get on the stand and
13 account for and defend the integration proposal, and in
14 Mr. Taylor's case, his entire past ownership.

15 That's what your clients have to do and
16 that's where you are right now, either settle it or try
17 it. The meter's running and the time is drawing near.
18 So endeth the settlement lecture.

19 Paragraphs 15 to 17 of the prehearing order
20 deal with marshalling, pre-identifying and exchanging
21 your phase one exhibits.

22 Are you prepared, Mr. Carr, to exchange all
23 your phase one direct case exhibits?

24 MR. CARR: Yes, your Honor.

25 JUDGE MILLER: Do they comply with Paragraphs

1 15 to 17 of the prehearing order?

2 MR. CARR: Yes, your Honor, they are bound,
3 tabbed and numbered.

4 JUDGE MILLER: Does each declaration have the
5 affidavit of the sponsoring witness attached?

6 MR. CARR: There is a signed declaration
7 attached to each exhibit, your Honor.

8 JUDGE MILLER: All right, saving two copies
9 to give to the Court Reporter at the upcoming
10 evidentiary admission session, proceed with your
11 exhibit exchange.

12 Have you completed your exhibit exchange, Mr.
13 Carr?

14 MR. CARR: Yes, your Honor.

15 JUDGE MILLER: All right, are you prepared to
16 exchange all your phase one direct case exhibits, Mr.
17 Belisle?

18 MR. BELISLE: Yes, your Honor.

19 JUDGE MILLER: Do they comply with Paragraphs
20 15 through 17 of the prehearing order?

21 MR. BELISLE: Yes, thanks to the kindness of
22 Mullin, Rhyne, I was able to bind them and tab them
23 last night, your Honor.

24 JUDGE MILLER: I didn't hear the first part
25 of your sentence, the first part of the sentence.

1 MR. BELISLE: Well, I brought these up, as I
2 evacuated Miami, I stopped by the office and picked up
3 piles of exhibits. I was afraid I would have to
4 exchange piles of exhibits, but the folks at Mullin,
5 Rhyne, Emmons & Topel gave me an opportunity to bind
6 and tab them last night and I thought that was
7 particularly gracious of them and I point that out.

8 JUDGE MILLER: All right. Does each
9 declaration have the affidavit of the sponsoring
10 witness attached?

11 MR. BELISLE: Yes, your Honor, although one
12 exhibit is request for official notice.

13 JUDGE MILLER: Therefore it is not needed
14 under those circumstances.

15 All right, saving two copies to give to the
16 Court Reporter at the upcoming evidentiary admission
17 session, proceed with your exhibit exchange.

18 Have you completed your evidentiary exhibit
19 exchange, Mr. Belisle?

20 MR. BELISLE: Yes, your Honor.

21 JUDGE MILLER: All right. Now, with the
22 exception of the engineering, which we're going to take
23 care of at the evidentiary admission session, we have
24 exchanged our direct cases.

25 Now, at this juncture, let me return to

1 Paragraph 1 of the prehearing order. Phase one has
2 two components, the Washington, D.C. hearings and, if
3 necessary, the field hearings.

4 Do we need a field hearing, Mr. Belisle?

5 MR. BELISLE: Your Honor, if I'm allowed to
6 question Mr. Taylor concerning the information in these
7 four affidavits that have been exchanged by Mr. Carr
8 yesterday, there would be no need to actually question
9 these particular individuals, Mr. Cagni, Ms. Klimas,
10 Mr. Ball and Mr. Garza.

11 JUDGE MILLER: Well, let me ask this question
12 of Mr. Carr.

13 Did Mr. Taylor obtain these statements?

14 MR. CARR: Yes, your Honor.

15 JUDGE MILLER: So he would be able to at
16 least explain how it came about and who he talked to,
17 et cetera, and talk about the basics. He might not be
18 able to talk about the words that the witness used, but
19 he can talk about the procedures that were employed and
20 he may well be quizzed as far as the Bench is
21 concerned, on whether he went to anybody in addition to
22 those four people.

23 Now, the basic rules that I've applied in
24 this case and I now know there's four, although I had
25 talked with Mr. Carr on the telephone and suspected

1 that that would be the number, but the basic rules that
2 I have followed in cases are, you can submit as many of
3 these statements as you want, but when the evidentiary
4 admission session comes, I'm only going to accept 15.

5 Now, that's not a problem here, but under
6 those circumstances Mr Carr would have had to make a
7 decision as to which ones of the 15, which of the 15 he
8 wanted. As far as I'm concerned then, you have the
9 right to cross examine Mr. Taylor to the extent that
10 I've indicated.

11 Now, is that satisfactory?

12 MR. BELISLE: Yes, and of course we would, if
13 we had any objections to the exhibits, we'd make them
14 at the evidentiary --

15 JUDGE MILLER: That's right, you have a right
16 to object to these statements. When they're offered
17 into evidence, I'll rule and I'll tell you in advance,
18 unless you have some pretty powerful objections, I'm
19 probably going to accept them, Mr. Belisle. But then
20 you have a right to examine Mr. Taylor, who obtained
21 these statements.

22 And with that, then there would be no need
23 for a field hearing?

24 MR. BELISLE: That's correct, your Honor.

25 JUDGE MILLER: Mr. Goldstein, I'd like your

1 comments.

2 MR. GOLDSTEIN: I agree, your Honor, that it
3 doesn't appear at the moment that there's any need for
4 a field hearing.

5 JUDGE MILLER: Okay, so that I don't need to
6 go back and start making plans, you see.

7 MR. GOLDSTEIN: The only difficulty would be
8 as we said at the inception of this conference, your
9 Honor, if when Mr. Carr puts on the over the air the
10 fact that there will be a hearing held pursuant to the
11 Commission's rules and the Communications Act, if for
12 some unanticipated reason we should get overwhelmed
13 with the number of public witnesses who would like to
14 testify in the proceeding, I would assume that your
15 Honor would revisit the question.

16 I, of course, do not anticipate that
17 happening.

18 JUDGE MILLER: I would revisit, I would be
19 willing to revisit the question, but I'd also, if there
20 aren't too many of them, could they be brought -- could
21 those witnesses be brought to Washington as opposed to
22 Mr. Carr exercising, and Mr. Belisle exercising, their
23 right to a field hearing.

24 If you have one or two people, could they be
25 brought to Washington?

1 MR. GOLDSTEIN: The difficulty in that, your
2 Honor, is if they are public witnesses, where does the
3 burden lie for funding them coming here? That the
4 whole premise underlying the field hearing concept was
5 that the public could go there --

6 JUDGE MILLER: That's correct.

7 MR. GOLDSTEIN: -- and that would be the one
8 dilemma.

9 JUDGE MILLER: But I assume --

10 MR. GOLDSTEIN: The Bureau can't afford to
11 pay for it, your Honor, that's for sure, but I can't
12 anticipate that happening here, but we don't know.

13 JUDGE MILLER: Well, there have been
14 occasions where somebody has written in and said that
15 they'd like to testify and I have had instances where
16 the Bureau said well, if you want, come on in.

17 MR. GOLDSTEIN: Right.

18 JUDGE MILLER: But that is up to them. They
19 end up paying their own way. Now, they would then have
20 to say to you well, I'd like to testify, but I don't
21 want to testify in Washington.

22 MR. GOLDSTEIN: That's correct. That's my
23 concern.

24 JUDGE MILLER: At the hearing, I'd like to
25 testify in the field. At that time, I think you'll

1 have to put in a -- if we reach that stage, that's what
2 we'll do, we'll talk about it.

3 MR. GOLDSTEIN: Fair enough. I just think --

4 JUDGE MILLER: And maybe -- and I think they
5 ought to understand that it may be that unless they've
6 got something powerful to say, I might not even be
7 interested in going to the field for that limited type
8 testimony.

9 MR. GOLDSTEIN: And, your Honor, we're just
10 speculating, but if it were to happen that there were a
11 couple, it's conceivable that we could work something
12 out via speaker phone with them being down in Florida.

13 I don't know what credibility questions would
14 arise, but --

15 JUDGE MILLER: Well, if they're going to be
16 testifying either -- assume anti Taylor or pro Taylor,
17 I'd want to see them, I want to see them. I mean I've
18 never been much of a speaker phone man. I have trouble
19 getting a grip on my witnesses.

20 I did go along with a fellow that had a trip
21 to Israel one time and he testified from Israel by
22 speaker phone.

23 MR. GOLDSTEIN: It's a shame you didn't have
24 the hearing there.

25 MR. CARR: That's right, I was just thinking

1 that.

2 (Laughter.)

3 JUDGE MILLER: All right. I'm going to put
4 out an order confirming the grant of your extension and
5 in that same order, I'm going to make reference to the
6 fact that we've agreed that as the case now stands,
7 that no field hearing will be required.

8 Page 8, Paragraph 18 in the prehearing order
9 sets up the evidentiary admission session for September
10 11th, 1992 and there you will formally identify and
11 offer the exhibits you just exchanged today.

12 At the conclusion of the conference, we'll go
13 through the witness notification process. If, Mr.
14 Belisle, you want to technically call Mr. Taylor as an
15 adverse witness, even though he's coming, make that
16 announcement at that time, although he's only going to
17 be put on the stand once.

18 But in that way, you'll both have the
19 flexibility of asking some leading questions if what he
20 has written is not persuasive.

21 Any problems with that, Mr. Carr?

22 MR. CARR: No, your Honor.

23 JUDGE MILLER: All right. Paragraph 19 --
24 oh, incidentally, you didn't have any documents you
25 wanted to exchange today, did you, Mr. Goldstein?

1 MR. GOLDSTEIN: Not on the direct case, your
2 Honor.

3 JUDGE MILLER: Okay. Paragraph 19 deals with
4 extensions of time. There's nothing about extensions
5 that I can say other than even though they're modest in
6 scope, they could well lead to a phase three hearing
7 because if I add any more issues, there's got to be
8 time for discovery and the works placed there.

9 Paragraph 20 of the prehearing order deals
10 with the hearing. The phase one hearing is to be held
11 starting on September 21st through September 25th.
12 Those dates are accommodated dates, so they are firm
13 dates.

14 MR. GOLDSTEIN: That's correct and it's
15 appreciated, your Honor.

16 JUDGE MILLER: All I'm saying is, I mean, I
17 understand that and that wasn't the point I was making.
18 The point is there's not going to be any change of
19 those dates, those dates are firm and that's the way
20 we're going to run it.

21 In that connection, let me go over some
22 hearing ground rules with you. Rule one, address the
23 Bench and not each other. Personal colloquies between
24 counsel cause delays, promote confusion and create a
25 generally unhealthy atmosphere.

1 Having told you the rule, you know what I'm
2 gong to say next. It's going to be violated, it's
3 going to be violated within the first day of hearing,
4 but -- and then I'm going to remind you of what I just
5 told you and then we'll come back to the hours.

6 Rule two, treat your adverse witnesses with
7 fairness and respect. Be polite. Don't confuse robust
8 litigation, which is what we want, with rudeness, which
9 is what we don't want. There's really no need to be
10 offensive or to badger the witness.

11 Rule three, don't argue with the witness.
12 Counsel can't testify, the witness can, so you're going
13 to lose the argument. And the corollary of that is
14 eventually don't write me findings and conclusions on
15 what you said.

16 Rule four is an evidentiary rule. If you
17 intend to make an evidentiary variance objection, have
18 the portion of the application in the room that your
19 claim is being varied from. I want to physically be
20 able to see the variance myself.

21 Rule five, we'll be proceeding in docket
22 order, so have your witnesses ready to go. We're not
23 going to hold up the hearing because a witness or
24 witnesses haven't arrived yet.

25 Don't anticipate that because there are

1 several witnesses ahead of the one that you have
2 scheduled that you have plenty of time to get them
3 here. That type of witness cushion has a way of
4 evaporating.

5 Now, on those rare occasions, if you need an
6 accommodation for a witness, talk to your opposing
7 counsel and arrange a switch off the record. Bring it
8 to me on the record and in all probability, as long as
9 it's not delaying the case, I'm going to approve it,
10 but don't ask me to force the accommodation.

11 Don't come to me and say well, I'd like to
12 have you rule that witness X can come after witness M,
13 even though that's not the ordinary way it would be,
14 but this is the way I want it and the answer is no, I'm
15 not going to do it, I'm not going to force the
16 accommodation.

17 We're going to go straight through this
18 hearing without lapses. There will be no lengthy
19 recesses while we wait for witnesses. Now, many an
20 occasion, lawyers have felt that that's harsh, but as I
21 probably pointed out to you before, if we accommodate
22 witness X, we're disaccommodating Mr. Carr, we're
23 disaccommodating Mr. Goldstein, we're disaccommodating
24 Mr. Belisle, we're disaccommodating the Court Reporter
25 and we're disaccommodating myself.

1 So I would rather accommodate the five of us
2 and disaccomodate him.

3 Rule six, we're going to be in hearing from
4 8:30 a.m. to 5:30 p.m. with an hour off for lunch, so
5 tell your loved ones to leave a light in the window.

6 Now, with those ground rules, is there
7 anything further we need to take up today, Mr. Carr?

8 MR. CARR: No, your Honor.

9 JUDGE MILLER: Mr. Belisle?

10 MR. BELISLE: No, your Honor.

11 JUDGE MILLER: Mr. Goldstein?

12 MR. GOLDSTEIN: No, your Honor.

13 JUDGE MILLER: Then we stand adjourned until
14 the evidentiary admission session date of September
15 11th, 1992 at 8:30 a.m.

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C E R T I F I C A T E

This is to certify that the attached proceedings
before the FEDERAL COMMUNICATIONS COMMISSION

in the matter of: JUPITER, FLORDIA

Docket Number: 92-114

Place: Washington, D.C.

Date: August 25, 1992

were held as herein appears, and that this is a true
and accurate record of the proceedings.

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EDNA SEGAL
Official Reporter